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IDENTICAL LETTERS DATED 31 JANUARY 2000 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE GENERAL ASSEMBLY, THE PRESIDENT OF THE SECURITY COUNCIL AND THE CHAIRPERSON OF THE COMMISSION ON HUMAN RIGHTS

In accordance with Commission on Human Rights resolution 1999/S-4/1 of 27 September 1999, as endorsed by the Economic and Social Council in its decision 1999/293 of 15 November 1999, I established an international commission of inquiry in order to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since January 1999. I was also requested under that resolution to make the report of the commission of inquiry available to the Security Council, the General Assembly and the Commission on Human Rights.

I have the honour to inform the General Assembly that the International Commission of Inquiry on East Timor, having completed its task, has submitted its report to me, which I am transmitting herewith. The report of the International Commission of Inquiry may be considered in the light of the report of the joint mission of the Special Rapporteurs of the Commission on Human Rights to East Timor (A/54/660), with which the Commission was requested to cooperate. That report is also available to the Assembly.

The thrust of the report and the conclusions of the International Commission of Inquiry are consistent with those of the Special Rapporteurs and with information available through the reports of the United Nations Mission in East Timor (UNAMET) and the United Nations Transitional Authority in East Timor (UNTAET) and other independent observers.

The Commission stated that the evidence gathered clearly demonstrated a pattern of serious violations in East Timor of fundamental human rights and humanitarian law. As the report indicates, the actions violating human rights

and international humanitarian law were directed against a decision of the Security Council and were contrary to the agreements reached by Indonesia with the United Nations to carry out the decision of the Security Council. This fact reinforces the need to hold the perpetrators accountable for their actions. The commission of inquiry has recommended ways of responding to this need.

In facing this challenge, I am encouraged by the commitment shown by President Abdurrahman Wahid to uphold the law and to fully support the investigation and prosecution of the perpetrators through the national investigation process under way in Indonesia. I have also been strongly assured by Foreign Minister Alwi Shihab of the Government's determination that there will be no impunity for those responsible.

As the report indicates, there is a need for conducting further systematic investigations of the violations that took place in East Timor during the period from January 1999. With a view to bringing justice to the people of East Timor, I intend to pursue various avenues to ensure that this task is accomplished adequately, inter alia, by strengthening the capacity of UNTAET to conduct such investigations and enhancing collaboration between UNTAET and the Indonesian Commission of Inquiry into Human Rights Violations in East Timor (KPP-HAM).

The International Commission of Inquiry found that the United Nations and the international community had a particular responsibility to the people of East Timor in connection with investigating the violations, establishing responsibilities, punishing those responsible and promoting reconciliation. I believe the United Nations has an important role to play in this process in order to help safeguard the rights of the people of East Timor, promote reconciliation, ensure future social and political stability and protect the integrity of Security Council actions.

The recommendations of the International Commission of Inquiry on East Timor merit careful consideration. The Security Council, the General Assembly and the Commission on Human Rights may wish to consider the further steps which should be taken. I wish to assure Member States of my firm commitment to cooperate with the intergovernmental process in this important matter. I will closely monitor progress towards a credible response in accordance with international human rights principles.

(Signed) Kofi A. ANNAN

Letter of transmittal

Letter from the International Commission of Inquiry on East Timor addressed to the United Nations High Commissioner for Human Rights

We have the honour to submit to you for transmission to the Secretary-General the report we have unanimously adopted in pursuance of the mandate laid down by the Commission on Human Rights in its resolution 1999/S-4/1 of 27 September 1999.

As we have mentioned to you, the Commission worked harmoniously and we are grateful for the help of the support staff you provided us. Notwithstanding the delay, the timing of our visit to East Timor was opportune; people had just begun to return while we were there and we were able to speak to them.

We would strongly urge that a follow-up investigatory process be established urgently, as set out in our conclusions and recommendations.

We would like to express our appreciation for the opportunity to serve on the Commission and would like to convey to you and the Secretary-General our high respect and regards.

(Signed) Sonia PICADO SOTELA
Chairperson

(Signed) Judith SEFI ATTAH
Member

(Signed) Justice A. M. AHMADI
Member

(Signed) Sir Mari KAPI
Member

(Signed) Sabine LEUTHEUSSER-SCHNARRENBERGER
Member

REPORT OF

THE

INTERNATIONAL COMMISSION OF INQUIRY

ON EAST TIMOR

TO

THE SECRETARY-GENERAL

January 2000

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I. INTRODUCTION

1. The present report is submitted pursuant to resolution S-4/1 adopted by the Commission on Human Rights on 27 September 1999 at its special session on the situation of human rights in East Timor held from 24 to 27 September 1999. The Special session was convened following increasing reports of widespread violence and serious human rights violations in East Timor after the popular consultation on the future status of East Timor on 30 August 1999.

2. In that resolution, the Commission condemned the widespread, systematic and gross violations of human rights and international humanitarian law in East Timor, the widespread violations and abuses of the right to life, personal security, physical integrity and the right to property, and the activities of the militias in terrorising the population. The Commission expressed its deep concern at the widespread forced removal and dislocation of persons to West Timor and other nearby areas, the serious humanitarian situation of the displaced East Timorese, the violence and intimidation directed against international agencies as well as most of the independent media and the lack of effective measures to deter or prevent militia violence and the reported collusion between the militias and members of the Indonesian armed forces and police in East Timor.

3. The Commission on Human Rights affirmed that all persons who committed or authorized violations of human rights or international humanitarian law were individually responsible and accountable for those violations and that the international community will exert every effort to ensure that those responsible were brought to justice. The Commission further affirmed that the primary responsibility for bringing perpetrators to justice rested with national judicial systems.

4. The Commission on Human Rights called upon the Secretary-General to establish an international commission of inquiry in order to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor, since the announcement in January 1999 of the vote and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future action, and to make the Commission's report available to the Security Council, the General Assembly and the Commission on Human Rights at its fifty-sixth session.

II. GENERAL BACKGROUND

5. East Timor was a colony of Portugal. On 28 November 1975, one of the East Timorese political parties, Revolutionary Front for an Independent East Timor (FRETLIN) declared independence from Portugal because Portugal was considering dismantling its colonies. On December 7 1975, Indonesia sent its troops into the Territory on the grounds that other East Timorese political parties and elements were seeking its intervention. The United Nations Security Council condemned the intervention by Indonesia. It adopted resolution 384/1975 calling for the withdrawal of Indonesian forces. On July 17, 1976, Indonesia formally annexed the territory and proclaimed East Timor as twenty–seventh province of Indonesia. The General Assembly rejected the claim that East Timor had been integrated into Indonesia and called for the exercise by the people of East Timor of their right to self–determination. [1]

6. In the 1990s East Timorese resistance groups formed an umbrella organisation called the National Council of Timorese Resistance (CNRT), while the Armed Forces of National Liberation of East Timor (FALINTIL) was engaged in armed opposition to Indonesia's presence in the territory. The Indonesian authorities had reportedly used armed militia groups as a strategy to deal with the armed and other opposition groups that resisted the Indonesian presence in East Timor. In 1998 and 1999, FALINTIL's operations reportedly were mainly defensive and confined to the hills. There have been some reports on occasional abuses committed by FALINTIL during this period.

7. On November 12, 1991 Indonesian forces shot into a crowd of people who had gathered at the Santa Cruz cemetery in Dili for a memorial service for a youth shot dead by TNI in an incident on 28 October 1991. The number of mourners killed at the Santa Cruz cemetery is not clear. The incident brought back the international focus on the question of self – determination of East Timorese people.

8. For the last several years, the Commission on Human Rights and other bodies had been concerned with the serious human rights violations in East Timor, relating to continuing allegations of extrajudicial killings, torture, "disappearances" and acts of sexual violence attributed to members of the Indonesian National Army (TNI) and pro-government militias and paramilitary groups.

9. In May 1998, following the resignation of President Suharto, the new Government of Indonesia under President Habibie, committed itself to reform and respect for human rights. As a result of greater display of tolerance by the authorities, open political activity by East Timorese students and CNRT reportedly increased. However, there were also reports that in late 1998 and early 1999, new militia groups were established in East Timor by the Indonesian

[1] General Assembly resolution 31/53 of 1 December 1976

authorities who reportedly portrayed the emergence of new militia groups as a spontaneous reaction against the activities of supporters of independence.

10. In January 1999, President Habibie offered East Timor substantial autonomy, or independence if the offer of autonomy was rejected. In an agreement signed on 5 May 1999, Indonesia, Portugal and the United Nations agreed on a consultation process for the East Timorese people to accept or reject the Indonesian offer of autonomy. The agreement stressed that the responsibility for ensuring a secure environment devoid of violence or other forms of intimidation would rest with the appropriate Indonesian authorities. The agreement also underscored the need for neutrality of the TNI and the Indonesian police for implementing the popular consultation process.

11. The Secretary-General identified six preconditions for implementing the consultation process - these were[2] :

- Bringing armed civilian groups under strict control ;
- The prompt arrest and prosecution of those who incite or threaten to use violence ;
- A ban on rallies by armed groups ;
- Ensuring the freedom of association and expression of all political forces and tenedencies;
- The redeployment of the Indonesian military forces ;
- The immediate institution of a process of laying down of arms by all armed groups to be completed well in advance of the holding of the ballot.

12. In June 1999, the Security Council established the United Nations Missions in East Timor (UNAMET) to organize and conduct a popular consultation.[3] The ballot originally set for August 8 1999, was twice postponed for security and technical reasons. At the end of the voter registration period, a total of 446,666 people had registered, including 422,575 from within East Timor.

13. On August 30 1999, nearly 99 per cent of registered voters turned out for the vote. On 4 September, the United Nations announced that the East Timorese people had overwhelmingly chosen independence : over 78% of the voters had rejected autonomy within Indonesia. The violence that followed the announcement of the results of the popular consultation led to the establishment of the International Commission of Inquiry on East Timor.

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[2] Question of East Timor, Report of the Secretary– General of 5 May 1999 (S/1999/513, para 6).
[3] Security Council resolution 1246/1999 of 11 June 1999.

III. INTERNATIONAL COMMISSION OF INQUIRY ON EAST TIMOR

A. Members, mandate, rules of procedures and meetings

1. Members

14. Pursuant to the resolution adopted by the Commission on Human Rights at its special session, the Secretary – General requested the High Commissioner for Human Rights to take further steps to implement the resolution and also requested that the report of the Commission of Inquiry be submitted to him by 31 December 1999. On 15 October 1999 the High Commissioner for Human Rights announced the composition of the International Commission of Inquiry on East Timor as follows: Sonia Picado of Costa Rica (Chairperson), Ms. Judith Sefi Attah of Nigeria, A.M. Ahmadi of India, Mari Kapi of Papua New Guinea and Sabine Leutheusser–Schnarrenberger of Germany.

15. The Chairperson of the Commission of Inquiry, Sonia Picado, is a member of the Costa Rican Legislative Assembly and Vice – chairperson of the Board of Directors of the Inter- American Institute of Human Rights. Judith Sefi Attah is a former Minister of Women's Affairs and Social Development of Nigeria and was a member of the Sub- Commission on the Prevention of Discrimination and Protection of Minorities (now called the Sub-Commission on the Promotion and Protection of Human Rights) from 1987 to 1997. A.M. Ahmadi is a former Chief Justice of India. Mari Kapi is Deputy Chief Justice of Papua New Guinea. Sabine Leutheusser -- Schnarrenberger is a member of the German Bundestag (Parliament), where she is on the Committee for Human Rights and Humanitarian Assistance, she is also a former Federal Minister of Justice and a practising lawyer.

16. Ravindran Daniel was appointed Secretary of the Commission. The other members of the secretariat were Roberto Ricci, Denis Obez, Janet Foot and Andreas Bouchard. Mr. Thomas E. McCarthy, Senior Advisor to the High Commissioner for Human Rights was the advisor to the Commission of Inquiry.

2. Mandate

17. The Commission of Inquiry derived its mandate from Commission on Human rights resolution S-4/1999/1. The mandate was :

> "to gather and compile systematically information on possible violations of human rights acts which might constitute breaches of international humanitarian law committed in East Timor, and to provide the Secretary – General with its conclusions with a view to enabling him to make recommendations on future actions".

18. The mandate of the International Commission of Inquiry included cooperation with the Indonesian national commission on human rights and thematic rapporteurs.

3. Rules of procedure

19. To facilitate its work, the Commission of Inquiry adopted rules of procedure, which are annexed to the report.

20. Based on its mandate, the Commission of Inquiry decided to focus on violations of the right to life (killings), personal integrity (torture) and personal liberty, destruction of property, violence against women, internal displacement and forced movement of people, intimidation and terror, the effects of violence on the enjoyment of economic and social rights (health and education) and links between the militia and the Indonesian army.

4. Meetings in Geneva

21. On 15 November, the Economic and Social Council (ECOSOC) endorsed the resolution of the Commission on Human Rights establishing the Commisson of Inquiry. The Commission immediately began its work and convened its first meetings in Geneva from 18 to 20 November 1999.

22. In Geneva, the members of the Commission of Inquiry met with the High Commissioner for Human Rights and were briefed by the secretariat. They also had a meeting with Ambassador Susanto Sutoyo, Deputy Permanent Representative of Indonesia to the United Nation's in Geneva.

23. As part of the preparations for the first session of the Commission of Inquiry in Geneva, the Chairperson had several meetings and briefing sessions in Geneva. The Chairperson met with Ms. F. Marclay and Mr. B. Leurat from International Committee of the Red Cross, Mr. Alvarado Mendoza Moura, Ambassador of Portugal to the United Nations Office at Geneva,) Mr. John D. Long, Counselor for political affairs from the Permanent Mission at Geneva of the United States of America, Mr. Sergio Vieira de Mello, special representative of the Secretary–General and Ms. Asma Jahangir, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and staff members of the branch servicing the rapporteurs. In addition, the Chairperson also met with representatives of Amnesty International, the International Commission of Jurists and World Council of Churches.

5. Meetings in Darwin

24. On 23 and 24 November 1999, the Commission met in Darwin Australia,

where, in addition to finalizing its methods of work, it met with Mr. Ian Martin, former Special Representative of the Secretary–General in East Timor (UNAMET), Mr. Allan Mills, Commissioner of Police for UNAMET and Lt. Col. O' Sullivan, a UNAMET military observer.

25. In Darwin, members of the International Commission also met with Mr. Albert Hasibuan and Mr. Asmara Nababan from the Indonesian National Commission of Inquiry on East Timor. The meeting between the members of the International Commission of Inquiry and the Indonesian National Commission of Inquiry helped clarify the areas in which they could cooperate, and also the mandate of the respective commissions. The information shared by the Indonesian National Commission regarding the status of its inquiry and its future plans provided the basis for further collaboration between the two commissions.

B. Visit to East Timor

26. The Commission visited East Timor from 25 November to 3 December 1999. The Commission members travelled extensively around Dili and surrounding areas to verify material destruction, to hear witnesses and to collect testimonies and documents. The Commission of Inquiry travelled to Los Palos, Maliana, Suai and Liquicia, where especially serious violations of human rights had been reported.

27. The members also travelled to Aileu to meet with Mr. Xanana Gusmao, President of CNRT. Mr. Gusmao shared his views regarding reconciliation and justice. He stressed the need for establishing accountability for the human rights violations committed in East Timor so that the people of East Timor would believe in justice and human rights.

28. In Dili, the members of the Commission of Inquiry met with Bishop Belo at his residence and heard his first hand account of the attack on the residence immediately after the announcement of the results of the popular consultation. Bishop Belo stressed that the perpetrators of human rights violations should be brought to justice, irrespective of whether they were East Timorese or Indonesians. During its visit to Dili, the International Commission witnessed the welcoming ceremony for Mr. Ramos Horta who visited the Commission.

29. The visit to East Timor included meetings with Mr. Sergio Vieira De Mello Special Representative of the Secretary–General for the United Nations Transitional Administration in East Timor (UNTAET). The Commission also met with Major General Peter Cosgrove, Commander of the International Force, East Timor (INTERFET). Senior military officers of INTERFET and staff and police officers of UNTAET briefed the Commission extensively.

30. The Commission also received information and briefings from representatives of ICRC, UNHCR, WHO, UNICEF and international and local NGOs.

1. Testimonies received from victims and witnesses in East Timor

31. The primary objective of the International Commission of Inquiry was fact-finding and gathering of information and it spent considerable time listening to testimonies provided by victims and witnesses, particularly those who had witnessed events directly. On some days, the Commission set out early in the morning to visit places outside Dili, where it interviewed victims and witnesses; returning to Dili, it continued to receive testimonies till late in the evening. As a result, in a period of nine days, it received detailed testimonies from more than 170 individuals. This is in addition to briefings and information provided by United Nations bodies and agencies, INTERFET and international and local NGOs. The International Commission of Inquiry while receiving testimonies was aware of the need for ensuring confidentiality.

32. The Commission gave special attention to receiving testimonies from women victims and also heard moving accounts from child victims.

33. After the first few days, the number of victims who wished to testify to the Commission became overwhelming. In Liquicia, Maliana and Suai and in Dili, the Commission was not able to interview all the persons who came to testify. It appears that, for the East Timorese, lodging complaints and seeking justice without fear was a new experience and their willingness to testify before the Commission was an expression of this new-found freedom. Victims and witnesses came to testify despite living amidst destruction and despite their lack of food and other basic needs. Most of them came on foot, since there was total lack of transport. Wherever the Commission visited, men, women and children warmly greeted it. The people of East Timor seemed to express a sense of joy despite the hardship and violence.

34. The members of the International Commission of Inquiry were confronted with testimonies surpassing their imagination.

35. The Commission interviewed a widow, whose husband had been killed. A young man came before the Commission who had been slashed in the abdomen and was still suffering from the injury. Several women who had gone through the trauma of rape and sexual abuse came to narrate their bitter experiences. Some of the raped women are now faced with unwanted pregnancies. The Commission met children who had witnessed the violence, including a six-year-old girl who lost her left eye during the shooting that took place at Bishop Belo's compound. These are just a few examples of the stories of human suffering that the Commission heard. It should be noted that suffering and a yearning for justice underlie the testimonies received by the Commission.

36. The following is a brief summary of testimonies received by the International Commission of Inquiry in various places in East Timor.

2. Liquicia

37. The evidence collected in Liquicia indicates that as early as February 1999, the militia had begun to intimidate people in the Territory. President Habibie's proposal in January 1999 for greater autonomy or independence for the Territory coincides with an increase in militia activity there.

38. Intimidation by the militia groups was often in the form of burning houses, destruction of property and beatings. The men fled to the hills and the women who remained behind were harassed and in some instances sexually abused.

39. An eyewitness described how on 17 March 1999, her father was stabbed and killed.

40. As a result of the increased activity of the militia, it appears that people began to seek refuge in towns. A witness stated that, in one instance, these internally displaced people were moved from Liquicia to Maubara.

41. In April, several hundred internally displaced people had sought refuge in the church in Liquicia. There is evidence that on 5 April a person was killed in the church and that militia and TNI were jointly responsible for this killing. On 6 April, according to an eyewitness account, militia and Indonesian army personnel went on a shooting spree at the church resulting in several deaths. A witness testified that he was engaged by TNI to remove 15 bodies from the site and dispose of them in the lake in Maubara. According to another witness employed as a nurse in a hospital in Dili, six injured persons were brought from Liquicia to the hospital. She described a young woman who had been stabbed in the back and neck. A man had his right ear cut off and had stab wounds at the back, arms and shoulder.

42. Following the shooting in the church the intimidation continued. The nurse also testified that she had been threatened and the window of her vehicle damaged. She stated that the police had taken no action against the militia. In the Liquicia church killings and in other cases of intimidation, no action seems to have been taken to arrest the perpetrators or end the intimidation.

43. Another witness testified that on 18 April she and her husband had been taken to a police station, where she had been made to strip and her husband had been beaten. She had been ordered at gun-point to give information regarding CNRT. The militia stole things from her house but her house was not burned.

44. A woman victim testified that she had been interrogated by the militia about her links with CNRT and had been forced to work for the militia. The incident happened on 30 April.

45. Another woman witness testified that on May 7, TNI took her husband away. He was dragged and stabbed. He later died.

46. The evidence gathered in Liquicia, including that regarding the killings in the church, indicate that the TNI had began engaging militias in the beginning of 1999 in a strategy to intimidate people to ensure their continued support for Indonesian rule in the Territory. The subsequent events indicate that this strategy was intensified after the 5 May agreement and the arrival of UNAMET to conduct the popular consultation.

3. Dili

47. According to a witness, on 17 April, four militia groups paraded in front of the Governor's office in Dili. Militia leaders and government officials were present. Speeches were made denouncing the CNRT leadership. The witness had observed 50 trucks brought by the militia. On the same day, she heard gunshots, and saw houses being burned. She also described police standing on the road as the militia marched along.

48. On the same day, according to one witness, people who had sought refuge in Manual Carrascalao's house were attacked by militia and members of TNI. This witness had accompanied the militia during the attack. Another witness testified that her husband, who had sought refuge in Manual Carrascalao's house, was killed on that day. Yet another witness testified that on 19 April, 11 bodies were brought in a truck and he was asked to bury them near Maubara lake. According to him these bodies were from the killing that took place in Manual Carrascalao's house.

49. A witness testified that, on 12 June, she was intimidated and raped in Dili by a militia member.

50. Another woman victim testified that on 25 August, some militia came to her cafeteria with weapons. They ate without paying. She was scared and closed the cafeteria. After the vote, militia threatened to rape her, but she escaped to the mountains.

51. After the announcement of the results of the popular consultation, people sought refuge in Bishop Belo's house out of fear. According to Bishop Belo, on 6 September, there were about 5,000 people on the premises. TNI soldiers and militia surrounded the compound. Bishop Belo had a meeting with a senior TNI officer. According to a witness, the TNI soldiers said that they were there to

protect the people from militia attack. The attack on the compound began after Bishop Belo was taken away. Eye–witness accounts indicate that TNI officers gave the order for and directed the attack. Two witnesses testified that they had seen three killings by stabbing. Another witness indicated that five persons were killed.

52. The International Commission met with a six year-old girl child who had lost her left eye as a result of being hit by a stray bullet when she was hiding with her mother at the Bishop's residence.

53. According to several witnesses, after the attack on the compound people were taken to the police station and later transported to West Timor.

54. On the same day, another witness, a staff member of Carter Center heard gunshots at the harbour and saw the Mobile Police with M16 weapons. This Witness' car was attacked and two other people were pulled from the car. He Saw them being beaten up by the militia.

55. A staff member of a human rights organization testified that on 5 September his office was attacked. He sought police assistance. The police offered to escort to safety only the foreigners in the office. Finally, everyone was moved to the police station. After that, militia entered the building and took away everything. The building was vandalized and burnt. This witness also stated that at the police station he saw a list displayed identifying pro- and ant- independence groups. His organisation was listed as pro-independence. The list confirmed the witness' view that the attack on its office was pre-planned.

56. According to a journalist who testified to the Commission of Inquiry, on 5 September an armed militia man terrorized the journalists staying at the Makota hotel. The TNI just stood watching. As a result of this intimidation, journalists and media persons left Dili.

57. On 6 September, at 1.30 p.m. militia and TNI attacked the ICRC compound where in excess of 2000 Internally Displaced People (IDPs) had taken refuge. Journalists filmed this attack, and the forced movement, before the police forcibly removed the journalists to the UNAMET compound. According to eyewitness reports, the IDPs were all searched. Those who were found to possess items, such as small flags indicating they were pro – independence were separated from the rest. The IDPs were taken for deportation to West Timor.

58. A witness stated that on 7 September he saw TNI looting in the Turismo Hotel. On 9 September, he witnessed the burning of houses in Dili.

59. On 30 August, at Bobo Leten polling station Mr. Joao Lopes, a local UNAMET staff member was stabbed in the back with a knife. The victim later died. An international staff member testified concerning the stabbing. Another international

staff member in whose house Joao Lopes died testified, concerning the efforts made to help the victim and his eventual death.

60. The International Commission of Inquiry received information from INTERFET and UNAMET Civilian Police (CIVPOL) that their investigation showed that militia killed a journalist from the Netherlands, Mr. Sander Thoenes, on 23 September. Mr. Thoenes was riding a pillion on a motorbike taxi when he and the driver, Florindo da Conceicao Araujo, were attacked.

61. The Commission received the testimony of a witness who had attended meetings with high-level Indonesian military and civilian officials in which plans were made to engage the militia in support of the pro-autonomy cause. The Commission also received documentary evidence regarding plans for the evacuation of people to West Timor in the event of the pro-independence proposal succeeding in the polls.

4. Los Palos

62. The Commission visited Los Palos on 27 November 1999. On arrival, it was informed by the Deputy Regional Commander of UN Civilian Police (CIVPOL) that he had recorded 14 murders and was in the process of identifying the sites of disposal of the bodies but was awaiting forensic assistance. He also stated that he had received information about the killing of 15 persons but for want of adequate staff he was unable to investigate all the crimes. According to him, ex-militia personnel were aware of some 40 – 50 other cases.

63. A former government official testified that at an official meeting on 5 May 1999 the question of use of funds allocated for welfare activity to meet the cost of securing support for autonomy had been discussed. It had been decided to spend 3.5 million rupia for the distribution of rice and other gifts to the people, with a view to manipulating the vote in favour of autonomy. The witness identified by name officials who were involved in taking that decision.

64. The next witness spoke about the killing of four persons in the TNI compound - Kodim 1629 Los Palos - at about 4.30 p.m. on 12 September 1999. He named the victims and the killers. He testified that next morning he saw blood in the garage of the TNI compound.

65. Another witness said that out of fear for his life he stayed in the TNI compound from 8 to 16 September 1999. He stated that after the United Nations forces left on 7 September 1999, the situation had rapidly deteriorated and there had been random shooting by the militia. People therefore took shelter in the TNI compound. During his stay in the TNI compound he had witnessed the TNI and the militia meeting together and planning the killing of people. He left for West Timor due to fear and returned on 23 October 1999.

66. A 16-year-old girl pointed to the place where her uncle had been killed in front of her. She had been spared. She said that while the women had been attacked they had not been killed.

67. A 22-year-old woman stated that, sometime in September 1999, the militia came and took away two women and gang-raped both of them. The witness identified by name militia members who were involved in the gang rape.

68. An 11-year-old girl spoke about the killing of her 13-year-old brother by the militia with a knife, while their mother had gone to Dili.

69. A former local government official testified that on 24 August 1999, in the sub district of Vikeke , the militia punched his people, hit two village leaders on the head and shot his secretary, but he did not die. The witness had not seen the actual assault by the militia but had taken the victims to the hospital in his vehicle for treatment. He stated that they had been assaulted because they were members of CNRT.

70. Another witness described how TNI and militia had killed his younger brother. On 9 September 1999, his brother had gone to a kiosk to buy cigarettes when six TNI men accosted and beat him and took him to the TNI compound. Later they dropped him at a crossroads, where he was picked up by the militia who arrived on motorcycles. They put him on a truck and thereafter the witness heard three shots when the truck was hardly 100 meters away. He named the TNI personnel involved in the incident. He suspects that his brother was killed because he was a CNRT activist.

71. The International Commission of Inquiry also received information about the investigations being carried out by INTERFET and CIVPOL into the killing of nine persons, including nuns and priests, on 25 September at Los Palos. INTERFET had detained five suspected perpetrators, who had confessed to their involvement in the killings on 25 September 1999. The Commission did not interview the suspects.

5. SUAI

72. A woman victim testified that on 16 September she was raped by a militiaman in a camp in Atambua. The victim stated that five other militias men had watched the incident. She also testified that she witnessed the rape of a nurse by militia men in the same camp.

73. A man testified that he had been working as a cleaner at a militia headquarters and had witnessed Indonesian army personnel issuing arms to members of the militia group.

74. A woman victim testified that she had been raped in a camp in West Timor. A militiaman had told other women that the victim's father supported independence. Another militiaman had threatened her with a knife and she had been forcibly taken out of the camp and raped.

Suai Church Massacre

75. The Commission visited the site of the massacre that took place at the Suai church on 6 September. At the time of the massacre, several hundred persons had sought refuge in the church. In the incident, three priests Father Dewanto, Father Francisco and Father Hilario were killed. Accounts of the militia and TNI removing the bodies of those killed in the church have now been corroborated with the exhumation in West Timor of 26 bodies alleged to be victims of the killings in Suai church. These bodies were recovered from Oeluli beach, Kobalima district, approximately three kilometers inside West Timor. The exhumations were undertaken at the direction of the Indonesian National Inquiry Commission on East Timor. The forensic expert who accompanied the International Commission of Inquiry examined the bodies and concluded that the remains were of 3 priests, 12 males, 8 females and 3 bodies of undetermined sex. One was a child, two in their teens, six in their teens to mid-20s, twelve were middle-aged and two elderly.

Eyewitness accounts of Suai church massacre

76. A woman witness stated that the women had been separated from the men and the men had been shot. She testified that militias were in the front and members of the TNI had stood behind them. She also testified that the victims of the killing included children.

77. The next witness stated that she had sought refuge in the church after the militia burned her house. At the church, she saw the militia and TNI throw grenades and then shoot the people who were trying to escape from the church.

78. Another witness testified that he was in the garage near the church when militia and TNI began shooting at the people in the church. He stated that the militia used machetes before shooting them.

79. A woman witness who had taken shelter at the church witnessed the shooting and killing. She testified that grenades were first thrown and when people began running they were shot or attacked with machete.

80. A witness testified to seeing the killing of two of the priests Fr. Hilario and Fr.

Francisco. According to him, Fr. Hilario was shot first and Fr. Francisco was slashed with a machete. He also stated that the church was set on fire and he himself suffered burns when trying to escape from the church. He had visible burn marks on his right ear and face.

81. Another witness testified that he hid in Fr. Hilario's room when the militia and TNI began shooting. He identified by name two militiamen who shot Fr. Hilario in the abdomen.

82. A woman witness testified that her brother was killed at the Suai church. She also testified that her younger sister was injured during the shooting. She and her daughters were taken to the military headquarters where militiamen sexually abused her daughter.

6. Cailaco and Maliana / Bobonaro District

83. The International Commission received testimonies regarding cases of threats and violence against the population before the ballot. The witnesses identified by name the militia groups, TNI units and also some individuals who were involved in these incidents. The Commission also received evidence that the TNI had recruited militia and issued weapons to them.

Incidents in Cailaco in April 1999

84. An eyewitness testified that on 12 April 1999, next to the TNI residence in Cailaco, people were forced to stand in a line by militia and TNI and then to kneel and pray. Then they were killed with automatic guns and pistols. The dead bodies were thrown on a truck and driven away. The witness identified the perpetrators by name. Twenty-two bodies were found later, 13 of them in one grave.

85. Another witness testified that during the days following these killings, people were intimidated. He also stated that on 14 April 1999, militia members killed two men.

Incidents in August 1999

86. A witness narrated the incident on 6 August 1999, when militia attacked the voter registration sites and the CNRT office in Maliana.

87. A witness testified regarding meetings held between TNI commanders and militia and village heads during which actions to be taken against pro-independence groups were planned. The planning included preparing a list of people who were suspected of being supporters of independence.

Incidents after the ballot in September 1999

88. On 8 September 1999, over 100 militia entered the police station in Maliana, where about 6,000 people had sought shelter against the attacks of the military and militia. The police station was entirely surrounded with concentric rings: militia, the Mobile Police Unit and TNI. The people inside the police station were first attacked with machetes. When they fell down, they were hacked into pieces. This was done in front of the people, who were forced to watch. The witness identified by name members of the militia and TNI who were responsible for this massacre.

89. Forty-seven dead bodies were found later in the river. A witness testified that he had transported four bodies to the river in a vehicle.

90. An eyewitness stated that on 29 September 1999, in Maliana, militiamen killed two men.

91. According to a witness, about 4,000 people from Cailaco left East Timor and were forced to go to West Timor in September 1999.

92. The Commission received testimony regarding two attempted cases of rape before the ballot in Cailaco.

7. Forcible movement of people

93. Following the announcement of the results of the popular consultation, a pre – planned evacuation of people to West Timor was undertaken by sea and by road. The International Commission received documents that indicated systematic planning by TNI for forced deportation and displacement of people. Eye–witness accounts and reports from humanitarian agencies and journalists indicate that people were forcibly moved. About 200,000 people were moved from East Timor to West Timor and other parts of Indonesia. By the end of November, approximately 110,512 people had returned. About 110,000 people are still in West Timor.

94. A witness stated that she had been forced to go to West Timor and that, in West Timor, the militia had kidnapped two of her daughters.

95. Another witness gave evidence that he had been forced to go to West Timor by TNI and militia. Another witness stated that he had been among about 4000 people who had been gathered to be taken to West Timor.

96. The information provided by UNHCR supports testimonies given by individual witnesses.

97. There are reports of militia continuing their violent activities in the camps in West Timor. A witness testified that he had been forced to leave for Atambua in West Timor and that militia who had fled from East Timor who were there had attacked him. He had been arrested by TNI and handed over to militia, who had stabbed him. He showed his wounds from the attack. According to him his intestine had been pulled out. He had large scar on his stomach and on his left shoulder.

8. Forensic investigation

98. During its visit to East Timor, the International Commission benefited from the presence of a forensic anthropologist, who accompanied the mission and provided a report regarding investigations into deaths. Based on the investigations conducted by INTERFET, the expert provided the following statistics:

- 165 deaths reported,
- 180 bodies recovered (plus 11 surface skeletons),
- 171 remains examined 171, and
- 77 individuals tentatively identified.

99. In his report to the Commission, the expert stated that,

> "Death reports are now coming in fits and starts. Frequently while investigators are in an area checking on a reported case, new previously unreported cases come to light. The overall majority of graves continue to involve single individuals. This author shares the impression of the previous forensic consultant that unless large mass graves are discovered, the present trend of reports representing single occupant graves with a scattering of graves containing small numbers of individuals will continue. At this date there has been no confirmation of the allegations that large numbers of bodies are disposed of in the sea.
>
> Logistical challenges presented in East Timor are significantly different from those of the former Yugoslavia and Rwanda where large mass graves are conducive to utilizing fixed exhumation teams and permanent examination facilities, often conveniently located side by side. Widely distributed single occupant or small graves require either that remains are transported to a central location, or that examinations are conducted in the area of the gravesite."

100. The Commission endorses the recommendations made by the expert. These are:

- To establish a permanent facility with space for body storage, evidence storage and space for a fixed photography station and evidence processing; in addition an outside area for pressure washing of clothing and space for cleaning of skeletal material; finally, office space for data entry and completion of autopsy reports.

- To establish a mobile autopsy capacity to perform post- mortem examinations outside Dili;

- To establish the identity of the dead and to ensure that part of the post-mortem procedure would be to obtain bone or tooth samples from remains and blood samples of putative relatives for future DNA identifications;

- To establish procedures for dealing with survivors. A clear-cut policy should be established for official custody of remains, their return to families and the support families can expect during this process. Those involved in interviewing survivors should be trained in supportive and sensitive techniques for doing so.

101. The expert also identified the need for ensuring coordination between the UNTAET Human Rights Unit and CIVPOL regarding the conduct of forensic and other investigations.

9. Health and education situation

102. The physical destruction has had an effect on the health and education services. Health service provision has been completely disrupted because of the destruction of buildings and movement of the population since the popular consultation. More than 70 per cent of health services have been disrupted. Even where the buildings have not been destroyed, equipment, drugs and files were looted. Large numbers of health professionals were Indonesians and their departure has affected the delivery of health services. Malaria and TB control programmes have completely collapsed. Vaccination programmes for polio and measles have to be restarted.

103. Most school buildings have been destroyed. The education system is in a state of complete paralysis. Prior to the popular consultation, most teachers were non-East Timorese and they left the territory after the announcement of the results. The scarcity of trained teachers is a major problem. Those students who were studying at universities in Indonesia were forced to discontinue to their

studies for security reasons. A large number of young men and women are in a situation where they may not able to finish their higher education.

10. Documentary and other evidence

104. The International Commission, in addition to collecting first- hand witness statements, reviewed reports and documents made available by UNMET and UNTAET and international and national NGOs. The Commission also took note of the joint report and recommendations of the Special Rapporteur on extrajudicial, summary and arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women. In addition, the Indonesian National Commission of Inquiry on East Timor shared with the International Commission its initial findings on the situation of displaced people in West Timor.

105. The International Commission by a letter of 29 November 1999, requested the Government of Australia to provide it with any information it might have relating to the matters within the mandate of the Commission. The Government of Australia responded positively to that request and the Commission appreciates the Australian Government's cooperation.

106. The testimonies, documents, reports and other material received by the International Commission of Inquiry as part of its mandate have been deposited with the Secretary-General for future use.

C. Visit to Jakarta

107. The Commission visited Jakarta from 5 to 8 December 1999.

108. On 15 November 1999 the Chairperson of the International Commission of Inquiry wrote to the Indonesian Mission in Geneva requesting authorization for it to visit Jakarta and West Timor. On 19 November, the Commission also made a oral request when it met with the Ambassador Susanto Sutoyo, Deputy Permanent Representative of Indonesia to the United Nations in Geneva. Authorization for the visit was received only on the night of 2 December 1999. Therefore the Commission was not able to undertake a visit to West Timor from Dili as originally planned. The International Commission had planned to visit West Timor with the help of international agencies to obtain first – hand information on the situation of displaced people in West Timor. The letter sent by the Indonesian Mission in Geneva dated 2 December 1999 authorizing the visit stated the following:

" I have the honour to convey the agreement of the Government of Indonesia for the visit of the International Commission of Inquiry to Indonesia with the following understanding:

"The agreement [for the visit] of the Indonesian Government was based on its continued commitment to cooperate with the United Nations Commission on Human Rights, and not on the resolution of the Fourth Special Session of the Commission and the decision of the ECOSOC.

The purpose of the visit is not to conduct a fact-finding or any investigation, but for dialogue and an exchange of views with officials of the Government of Indonesia and to cooperate with the National Commission on Human Rights in addressing the allegations of human rights violations in East Timor.

While the Indonesian Government has agreed for the visit to take place, it maintains its position that in view of the fact that the Indonesian National Commission on Human Rights has established a National Commission of Inquiry with the task of conducting an investigation on alleged human rights violations in East Timor, the establishment of an International Commission of Inquiry is unnecessary.

The details of the provisional programme of the visit should be finalised between the International Commission and the Government of Indonesia in Jakarta".

109. During its visit to Jakarta in addition to meetings with the Indonesian Human Rights Commission and its National Commission of Inquiry on East Timor, the members met with Mr. Juwono Sudarsono, Minister of Defence, Mr. Alwi Shihab, and Minister for Foreign Affairs and Mr. Marzuki Darusman, Attorney General. The members also had an opportunity to meet with NGO representatives.

1. Cooperation with the Indonesian National Commission of Inquiry

110. On the basis of Commission on Human Rights resolution the International Commission of Inquiry made efforts to establish close cooperation with the Indonesian National Commission of Inquiry on East Timor, inviting that Commission to send representatives to Geneva to meet with members of the International Commission prior to their departure to the region, or failing that, to meet with them in Darwin. Consequently, Mr. Albert Hasibuan and Mr. Asmara Nababan of the Indonesian National Commission of Inquiry on East Timor came to Darwin to meet with the members of the International Commission.

111. The dialogue that began in Darwin was continued in Jakarta where the

two Commissions met together twice and had extensive discussions. The discussions focused on the question of ensuring justice and reconciliation. among other issues, the members of the International Commission sought clarification from the Indonesian National Commission regarding the nature and scope of an Indonesian human rights court to be established under the Presidential Decree issued by the previous government.

112. The members of the International Commission discussed the Presidential Decree and pointed out several deficiencies in it, the principal one being that it was prospective in character and applied only to violations committed after it came into effect on 8 October 1999. For human rights violations committed before that date, the existing criminal law would apply. The Indonesian National Commission conceded that the Decree would not cover human rights violations committed in East Timor and stated that the Government was preparing a new law for establishing a human rights court. The International Commission also pointed out that the right to claim compensation was virtually illusory since it would be difficult for East Timorese to come to Indonesia to make their claims.

113. The Indonesian National Commission and the Attorney-General acknowledged the concerns expressed by the International Commission and described a new law that was under preparation. The International Commission was not able to comment on the specifics of the law since the text was not available. Based on the description given by the National Commission, it was not clear that the new law would cover the violations committed in East Timor. The International Commission of Inquiry expressed the view that the new law as described was beset with problems and if enacted would not be efficacious. Since most violations took place in East Timor, the Government of Indonesia would not be in a position to investigate them. Moreover, witnesses fearing victimization would be reluctant to travel to Indonesia to testify in a court there, whatever its composition. In addition, there could be a host of logistic, as well as jurisdictional issues that might not only make trials protracted but also result in miscarriages of justice. The Indonesian Commission and the Attorney General conceded the complexity of the legal problems but hoped that the new statute would address them to ensure justice to the East Timorese people.

114. The Indonesian Commission requested that it be allowed access to evidence, including witness testimonies, gathered by the International Commission. The International Commission responded by stating that it would submit its report including the evidence gathered to the Secretary–General and it would be for him to share the evidence, through a credible process that took account of the need to protect the witnesses.

115. The International Commission pointed out that further systematic investigation should be conducted to collect evidence that could be used for ensuring justice and accountability.

116. The International Commission of Inquiry appreciates having been able to establish close cooperation with the Indonesian National Commission of Inquiry on East Timor. The International Commission of Inquiry benefited from the information and insight shared with it by the Indonesian National Commission. The preliminary findings made by the Indonesian National Commission regarding the involvement of some elements of the TNI in the violations of human rights committed in East Timor are similar to the findings made by the International Commission of Inquiry.

2. Meetings with the Minister of Defence, the Minister for Foreign Affairs and the Attorney General

117. The members of the International Commission of Inquiry held separate discussions with the Minister of Defence, the Minister for Foreign Affairs and the Attorney General. It emerged from these discussions that the government acknowledged that some elements of the militia and the army were responsible for the abuses committed in East Timor. They expressed the view that the violence was mainly a question of conflict between East Timorese. The Indonesian intervention in East Timor in 1975 was also explained as having been an intervention to deal with conflict between those East Timorese supporting independence and those supporting integration with Indonesia. The popular consultation process was perceived by the Indonesian authorities as biased in favour of independence groups. A number of complaints to that effect had been made to UNAMET by pro-autonomy groups without any results. The violence that had erupted after the announcement of the results of the ballot was a result of that perceived bias and of anger at losing the vote. The longstanding and close relations between some elements of the army and the militia made it difficult for the army to control the militias, including in West Timor.

118. In these meetings, the International Commission of Inquiry discussed the modalities for ensuring justice for East Timorese victims. Among the ideas that emerged from these meetings was the establishment of a United Nations sponsored truth and reconciliation commission, based on the South African model, with possibilities for both pardon and indictment. The International Commission of Inquiry pointed out the difficulties involved in an Indonesian agency investigating and an Indonesian court trying cases of violations committed in East Timor. The points raised were acknowledged by the Indonesian authorities to be genuine difficulties. The establishment of a commission for ensuring justice for East Timorese victims that would include persons appointed by the United Nations and the participation of East Timorese and Indonesian personalities, was discussed.

119. The International Commission of Inquiry also received reports and

documents from the Indonesian authorities setting out the government's position, and providing information on its investigations of events in East Timor following the popular consultation.

IV. CONCLUSIONS

120. The International Commission of Inquiry, in preparing its conclusions for submission to the Secretary–General, has carefully considered the testimony of witnesses, the reports of experts, information provided by the United Nations in East Timor and INTERFET, reports of other organizations and its own observations in East Timor. It has also carefully considered the information and views provided by the Government of Indonesia, and the Indonesian Commission of Inquiry.

121. Due to the limitations, including time constraint encountered by the International Commission, its fact finding mission should be regarded as a starting point in the process of bringing those responsible for violations of human rights and international humanitarian law to justice.

122. The evidence gathered has led the Commission to a number of conclusions about the pattern of human rights violations in East Timor since January 1999 and those responsible for those violations. On the basis of those conclusions and in the light of the specific circumstances of the violations of human rights and breaches of humanitarian law in East Timor, the Commission has agreed on a number of recommendations.

A. Patterns of human rights violations and breaches of humanitarian law

123. The International Commission of Inquiry has concluded that there were patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people. Patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army (TNI) and the militias in the violations. More specifically, the International Commission would like to emphasise the following:

1. Intimidation and terror

124. The evidence gathered shows that intimidation and terror were

systematically used to prevent the people from freely exercising their political choice. Before the popular consultation ballot, intimidation and terror were primarily aimed at pro-independence groups and individuals. In the post- ballot period and after the announcement of the results, the attacks were widespread and took the form of vengeance.

2. Killings and massacre

125. There is evidence of threats of violence against persons and actual violence resulting in injuries and deaths in large numbers. The killings were often brutal and gruesome. In some instances, massacres took place in sites where people had sought refuge.

3. Gender Violence

126. Because the men fled to the mountains, the women were targeted for sexual assault in a cruel and systematic way.

127. There is evidence of actual sexual abuse and rape of women. While in general, the militia refrained from killing women, they were subjected to humiliation and different forms of harassment that includes, stripping and sexual slavery. Women and children were also victims of force displacement into exile.

4. International staff and journalists

128. Local and international staff of UNAMET, other humanitarian agencies, NGOs and journalists were also targeted by the militia and TNI. After the announcement of the results of the consultation, this resulted in the evacuation of local and international staff of UNAMET and other agencies, as well as journalists and others. This seemed to be in order to prevent them from witnessing acts of violence and destruction of property that took place subsequently.

5. Destruction of property

129. The acts of violence by militia and TNI included, burning down of houses and office buildings of pro-independence groups. The evidence gathered shows that before the popular consultation ballot, destruction of property was selective and not widespread, involving properties of specific individuals known for their support for pro-independence.

130. After the announcement of the results, the destruction was widespread and systematic in towns and cities. The Commission saw for itself the extent of damage in Dili and all the other sites it visited. The damage to private and public property ranges from 60 to 80 per cent in the whole country. Even more serious is the fact that most hospitals and health centres have been destroyed, as well as school buildings. The destruction includes damage to public utilities, such as water and power. The widespread and systematic nature of the destruction indicates that it was planned and co-ordinated.

6. Displacement of people

131. Evidence gathered shows that before the popular consultation ballot, intimidation and terror resulted in internal displacement of people. People sought refuge in churches and other safe areas, including fleeing to the mountains. Intimidation of the internally displaced included killings in places of refuge, denial of access to humanitarian agencies and, in some instances, denial of necessities such as water. The intimidation was aimed at dispersing people from their places of refuge.

132. After the announcement of the results of the popular consultation, thousands of people were forcibly assembled and moved to West Timor. The evidence shows that people were moved by sea and by road. The movement and evacuation of people would not have been possible without prior planning and a systematic execution of the plan.

133. Evidence gathered from people who have returned from West Timor shows that the people in the camps in West Timor have been subjected to intimidation and terror. The Commission also received reports of the abduction of children from camps. There is evidence of intimidation by militia to prevent those who want to return to East Timor from doing so. Due to all this, it was thus extremely frustrating for the Commission not to have been able to visit West Timor as it had requested from the beginning.

7. Destruction of Evidence

134. The information gathered by the Commission shows that there was a systematic attempt to destroy evidence, including removal of bodies from the site of killings. The removal of dead bodies to West Timor from the massacre site in Suai church is a clear indication of the extent of efforts to conceal evidence. The Commission was in Dili when bodies of victims of the Suai massacre were brought back from West Timor after having been exhumed there by the Indonesian National Commission of Inquiry. There are possibilities that more bodies will be found on a day to day basis.

8. Indonesian army and militia involvement

135. Evidence gathered shows that militia groups were responsible for the intimidation and terror experienced by the people of East Timor before and after the popular consultation.

136. The evidence further shows that the number of militia groups and their activities increased from January 1999. There is also evidence that the Indonesian Army and the civilian authorities in East Timor and some in Jakarta pursued a policy of engaging the militia to influence the outcome of the popular consultation. The approach pursued was to provide the impression that the East Timorese were fighting among themselves.

137. There is evidence that the policy of engaging militias was implemented by the Kopassus (Special Forces Command of TNI) and other intelligence agencies of the Indonesian army. The policy manifested itself in the form of active recruitment, funding, arming and guidance and of the provision of logistics to support the militias in intimidation and terror attacks.

138. There is evidence to show that, in certain cases, Indonesian army personnel, in addition to directing the militias, were directly involved in intimidation and terror attacks. The intimidation, terror, destruction of property, displacement and evacuation of people would not have been possible without the active involvement of the Indonesian army, and the knowledge and approval of the top military command.

139. The Indonesian police, who were responsible for security under the 5 May agreement, appear to have been involved in acts of intimidation and terror and in other cases to have been inactive in preventing such acts.

140. The Commission is of the view that ultimately the Indonesian army was responsible for the intimidation, terror, killings and other acts of violence experienced by the people of East Timor before and after the popular consultation. Further, the evidence collected to date indicates that particular individuals were directly involved in violations of human rights.

141. The Commission received allegations that armed groups supporting independence were also involved in violent attacks during the period from January 1999. The incidents were relatively fewer in number and confirmation of their existence has not been obtained.

9. Human rights and international humanitarian law violations

142. There is no doubt that the evidence gathered clearly demonstrates a

pattern of serious violations of fundamental human rights and humanitarian law in East Timor. The violations include, but are not limited to, violations of the rights to life and to freedom from torture, cruel, inhuman or degrading treatment or punishment, violence against women, and violations of rights relating to freedom of assembly, association, opinion and expression, freedom from arbitrary arrest and exile, and freedom of movement and residence, and the right to own property. In addition, and particularly after the proclamation of the results of the consultation, further human rights were violated through the large- scale destruction, including the right to work, the right to an adequate standard of living, including food, clothing, housing and medical care, and the right to education.

B. Recommendations

1. Rapid return of displaced persons

143. The Commission of Inquiry is deeply concerned about those individuals and families who were displaced from East Timor to other parts of Indonesia after the announcement of the results of the consultation and who are being retained against their will in camps without adequate contact with UNHCR or ICRC and who wish to return to their homes in dignity and safety. The Commission calls for the rapid resolution of this problem.

2. Disarming of militias

144. The Commission of Inquiry calls for the disarming of the militias in West Timor as an important step towards enabling the East Timorese to return home safely. The Commission also calls for the demobilization of all non-regular forces in East Timor that are still under arms.

3. Investigation, prosecution and reparations

145. During its time in East Timor, the International Commission became acutely aware of the suffering of the people of East Timor by reason of the violations of human rights which had taken place. It also noted that most of the East Timorese who addressed themselves to the Commission did not call for revenge or retribution, but sought justice, recognition of their rights and reconciliation.

146. The Commission believes it has a special responsibility to speak out on behalf of the victims who may not have easy access to international forums. They must not be forgotten in the rush of events to redefine relations in the region, and their basic human rights to justice, compensation and the truth must be fully

respected. This is a responsibility which the United Nations must shoulder both in the short and long terms, in particular in its trusteeship relation with the people of East Timor as it administers the territory towards independence.

4. Special United Nations responsibility

147. The actions violating human rights and international humanitarian law in East Timor were directed against a decision of the United Nations Security Council acting under Chapter VII of the Charter and were contrary to agreements reached by Indonesia with the United Nations to carry out that Security Council decision. Under Article 25 of the Charter, Member States agree to accept and carry out the decisions of the Security Council. The organized opposition in East Timor to the Security Council decision requires specific international attention and response. The United Nations, as an organization, has a vested interest in participating in the entire process of investigation, establishing responsibility and punishing those responsible and in promoting reconciliation. Effectively dealing with this issue will be important for ensuring that future Security Council decisions are respected.

5. A human rights approach to future investigations

148. Future action with regard to the violations of human rights in East Timor should be governed by the following human rights principles: the individual's right to have an effective remedy for violations of human rights, which includes the State's responsibility to investigate violations, prosecute criminally and punish those responsible[4]; the individual's right to reparation and compensation for violations of human rights from the State responsible for the violations[5]; the need to act against impunity in order to discourage future violations of basic human rights.

149. The Commission of Inquiry concludes that, for the reasons set out above, the investigations into the violations and those responsible must be continued. This is especially important because new information and testimonies are daily becoming available with the return of people to East Timor.

150. In order to enable ongoing investigations to be continued and to avoid loss

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[4] See, Human Rights Committee, Views of 13 November 1995, Communication No. 563/1993 (Colombia) (CCPR/C/55/D/563/1993, para. 8(6)).

[5] See Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law (E/CN.4/Sub.2/1996/17 annex).

of evidence while the international investigation recommended below is being set up, full support should be given to the investigations being carried out by UNTAET. UNTAET should receive the forensic and investigative assistance it has requested, as well as the assistance required to set up rapidly a functioning judicial system in East Timor. The collaboration established between the United Nations and the Indonesian National Commission of Inquiry should also be pursued and support should be given to that Commission's investigations in Indonesia of violations committed in East Timor, and particularly for those reportedly still taking place in West Timor.

151. In considering how the future investigations of human rights and international humanitarian law violations could be organized and how those responsible could be punished and reparations made to the victims, the International Commission of Inquiry considered a number of specific suggestions. Some proposals were for an international criminal tribunal and others referred to experiences in other countries with truth and reconciliation commissions. In light of the above considerations and in order to respond to the violations of human rights in East Timor and to respond to the rights of the victims, the International Commission of Inquiry recommends the following;

6. International independent investigation and prosecution body

152. The United Nations should establish an independent and international body charged with:

- Conducting further systematic investigations of the human rights violations and violations of international humanitarian law in East Timor during the period from January 1999;
- Identifying the persons responsible for those violations, including those with command responsibilities;
- Ensuring reparations for the violations from those responsible;
- Prosecuting those guilty of serious human rights violations within the framework of its function to ensure justice; and
- Considering the issues of truth and reconciliation.

7. International human rights tribunal

153. The United Nations should establish an international human rights tribunal consisting of judges appointed by the United Nations, preferably with the participation of members from East Timor and Indonesia. The tribunal would sit in Indonesia, East Timor and any other relevant territory to receive the

complaints and to try and sentence those accused by the independent investigation body of serious violations of fundamental human rights and international humanitarian law which took place in East Timor since January 1999 regardless of the nationality of the individual or where that person was when the violations were committed

154. The International Commission of Inquiry makes these proposals to enable the Secretary General to recommend establishment of an appropriate mechanism taking into account various bodies that have been established previously for ensuring justice and reconciliation.

155. It is fundamental for the future social and political stability of East Timor, that the truth be established and those responsible for the crimes committed be brought to justice. Every effort has to be made to provide adequate reparation to the victims for only then can true reconciliation take place.

156. The International Commission of Inquiry wishes to express its appreciation to all those who assisted in its work and particularly the staff of UNAMET / UNTAET and INTERFET for the support provided in East Timor.

Annex

RULES OF PROCEDURE

Adopted by the Commission

Rule 1 Mandate

The Commission shall examine and analyze the information submitted by States, international humanitarian organizations, or other persons or bodies pursuant to resolution 1999/S-4/1 as well as such further information as the Commission may obtain through its own investigations or efforts, with a view to providing the Secretary-General with its conclusions on the evidence on possible violations of human rights and/or acts which may constitute breaches of international humanitarian law committed in East Timor.

Rule 2 Meetings and quorum

1. The Commission shall hold its meetings in private but may open them to the public as and when it deems is necessary for the enhancement of the effectiveness of its work.

2. The Commission shall meet at such times as it may designate; meetings may otherwise be called by the Chairperson.

3. The Chairperson may declare a meeting open when at least a majority of the members of the Commission are present. The presence of a majority of the members shall be required for any decision to be taken.

Rule 3 Restraint in the disclosure of information

Members of the Commission shall exercise restraint in disclosing information. They shall refrain from taking a stand in public or any confidential question under discussion in the Commission. The Chairperson will make information on the work of the Commission available to the extent she deems it appropriate.

Rule 4 Power of the Chairperson

The Chairperson shall declare the opening and closing of each meeting of the Commission and, at such meetings, shall direct the discussions, accord the right to speak, put questions to the vote, announce decisions, rule on points of order and have complete control of the proceedings.

Rule 5 Secretariat

The Secretary of the Commission shall be responsible for making all arrangements connected with the work of the Commission including arrangements for the meetings of the Commission. He shall distribute documents and materials to the members of the Commission as requested by the Commission, its Chairperson or any member thereof, and shall be responsible for the preparation of the records of the meetings of the Commission.

Rule 6 Records

1. The Commission will be provided with records of its meetings in English.

2. The Commission will arrange for the safekeeping and conservation of its records and files. After the conclusion of its work, the Commission will transmit its records and files to the Secretary-General of the United Nations.

Rule 7 Participation of States, international humanitarian organizations, or other persons or bodies

The Commission may invite States, international humanitarian organizations, or other persons or bodies to participate in its discussions, when the Commission deems it necessary for the enhancement of the effectiveness of its work.

Rule 8 Investigations

1. The Commission may hear witnesses or experts, on its own initiative or upon proposal by States, international humanitarian organizations, or other persons or bodies. In such cases, the Commission shall determine the modalities for summoning witnesses and experts.

2. The Commission may authorize one or more of its members to hear any witness or witnesses.

3. The Commission may decide to visit the territory of East Timor or any other State, upon invitation or on its own initiative with the consent of any such State. Visits may be carried out by the Commission in its entirety, by one or more of its members, or by staff of the Commission, as decided by the Commission.

Rule 9 **Decisions**

The Commission will make every effort to take its decisions by consensus. In the absence of consensus, decisions of the Commission will be taken by a majority of the members present and voting.

Rule 10 **Reports**

1. The Commission may designate a rapporteur for any question of a general or specific nature.

2. The Commission shall report its conclusions to the Secretary-General in accordance with resolution 1999/S-4/1 of the Commission on Human Rights.

3. Members of the Commission who wish to make a separate statement may have such a statement appended to the report.

Rule 11 **Other procedural matters**

Any procedural matters arising at a meeting which are not covered by these rules shall be dealt with by the Commission.